
Court Exhibit "A"

In this breach of contract litigation, Defendant-Employers have filed Preliminary Objections pursuant to Rule 1028(a)(4) in the nature of demurrer to Count Three of Plaintiff's Amended Complaint. It is well established that the question presented by a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where doubt exists, this doubt must be resolved in favor of overruling the demurrer. Donaldson v. Davidson, 2016 WL 3902896 (Pa. Superior Ct. 2016); Barton v. Lowes Home Center, Inc., 124 A.3d 349 (Pa. Superior Ct. 2015).

In this case the facts in Plaintiff-Chong's Amended Complaint aver that the oral contract for employment was reached in Pennsylvania, with work done by the Plaintiff in Philadelphia and elsewhere.

The Defendants, who were the owners, officers and agents of the purported restaurant do fit within the definition of "Employer" within the Pennsylvania Wage Payment and Collection Law (WPCL), 43 P.S. §260.29:

“**Employer.**’ Includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this Commonwealth and any agent or officer of any of the above-mentioned classes employing any person in this Commonwealth.”

See also, Oberneder v. Link Computer Corporation, 674 A.2d 720 (Pa. Superior Ct. 1996), for discussion on statutory construction of the WPCL; Todora v. Jones & Laughlin Steel

Corporation, 450 A.2d 647, 650 (Pa. Superior Ct. 1982), holding that the statutory term “Employer” is broadly defined and should be liberally construed even though the WPCL is not the exclusive remedy for one seeking compensation for work performed in Pennsylvania. These individual Defendants have been described as actively involved in corporate policy making, corporate decision making and/or corporate advisement. They are employers for purposes of the WPCL. Hirsch v. EPL Technologies, Inc. 910 A.2d 84 (Pa. Superior Court 2006); Frank Burns, Inc. v. Interdigital Communications Corporation, 704 A.2d 678 (Pa. Superior Ct. 1997).

Finally, it must be noted that a consideration of statutory construction is that a “modifying clause operates only upon the phrase preceding it” 1 Pa. C.S. §1903(a). The phrase “in this Commonwealth” immediately follows and qualifies the phrase “employing any person”, in 43 P.S. §260.2a. With this in mind, the Defendants’ reliance on the location of the purported restaurant is misplaced. The primary purpose of the WPCL is to ensure that those who are employed in Pennsylvania receive compensation for their work. This Court concludes that doubt exists and the demurrer must be **OVERRULED**.

A handwritten signature in black ink, appearing to be 'C. W. J.', is written over a horizontal dotted line.